

What is the public domain?  
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### **What is the public domain?**

The public domain is generally defined as consisting of works that are either ineligible for copyright protection or with expired copyrights. No permission whatsoever is needed to copy or use public domain works. Public domain works and information represent some of the most critical information that faculty members and students rely upon. Public domain works can serve as the foundation for new creative works and can be quoted extensively. They can also be copied and distributed to classes or digitized and placed on course Web pages without permission or paying royalties.

### **What types of works and information make up the public domain?**

Categories of material that are generally not eligible for federal copyright protection include:

- Items ineligible for copyright protection, i.e., ideas and facts
- Works with expired copyrights
- Works governed by early copyright statutes that failed to meet the requirements for copyright protection, i.e., notice, registration, and renewal requirements
- U.S. government works (note: projects written by non-government authors with federal funding may be copyright protected)

Professor Pamela Samuelson at UC Berkeley categorized various types of works and information that make up the public domain (Samuelson, see p.84):<sup>1</sup>

- Scientific principles, theorems, mathematical formulae, laws of nature, etc.
- Scientific and other research methodologies, statistical techniques and educational processes
- Ideas, concepts, discoveries, theories and hypotheses
- Facts, information, data, know-how and knowledge
- Laws, regulations, judicial opinions, government documents and legislative reports
- Innovations qualifying for intellectual property protection, in which either no rights are claimed or in which rights have expired
- Innovations that fail to qualify for intellectual property protection because they do not meet the requirements for patent, copyright or trademark protection
- Word, names, numbers, symbols, signs, rules of grammar and diction, and punctuation

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<sup>1</sup> PDF document: "Digital Information, Digital Networks and the Public Domain" from Conference on the Public Domain held at Duke Law School, November 2001,  
<http://www.law.duke.edu/pd/papers/samuelson.pdf>

## How can I put a work in the public domain?

Since the 1976 Copyright Act<sup>2</sup> provides that copyright attaches automatically upon the creation of an original work that is fixed in a tangible medium of expression, copyright protection has been automatic. This makes the task of assigning one's own work to the public domain more difficult than in the past. Professor Laura Gasaway at the University of North Carolina at Chapel Hill suggests that one of the only ways an individual can do something that approximates dedicating a work to the public is to include a statement on all copies of the work with language such as "The author grants a nonexclusive license to use this work in any way." (Gasaway, *The Shrinking Public Domain*, Course Module I, September 2002). Alternatively, authors can use open access licenses to achieve nearly the same effect.

## Rules of thumb for public domain works

There is no easy method to determine whether a work is in the public domain because the laws are complex and have changed numerous times over the years. Here are some rules of thumb for determining if works are in the public domain:

1. If the work was published in the United States prior to 1923, it is in the public domain.
2. For works published between 1923 and March 1, 1989, it depends on whether the certain statutory formalities were observed, such as providing a notice of copyright on the work or renewing the copyright per statutory deadlines. Examples:
  - a) If the work was published in the United States between 1923 and 1978 **without a notice**, it is in the public domain. (Note: If the work published during this period has a notice, it is protected for 95 years from the date of publication.)
  - b) If the work was published in the United States between 1978 and March 1, 1989 **without a notice and registration**, it is in the public domain. (Note: If the work published during this period has a notice, but not a registration, it is protected for 70 years from the death of the author.)
  - c) If the work was published in the United States between 1923 and 1963 **with a notice**, but copyright was **not renewed**, it is in the public domain. For more information on renewals, see [How to tell if copyright has been renewed](#).<sup>3</sup>
3. After March 1, 1989, all works (published and unpublished) are protected for 70 years from the date the author dies. For works of corporate authorship (works made for hire), the copyright term is the shorter of 95 years from publication, or 120 years from creation.

## How to tell if copyright has been renewed

Copyright renewals only concern those works that were first published in the U.S. during the years 1923-1963. Works published during this period had to get their copyrights renewed at the U.S. Copyright Office in their 28th year in order to stay copyrighted. There is no need to research renewals prior to 1923 as these are in the public domain, or after 1963 as these received automatic renewal for a 95-year copyright term. To find out whether a particular work was renewed usually requires a search of records in the U.S. Copyright Office. For more information on this process, see [U.S. Copyright Office: Circular 15: Renewal of Copyright](#).<sup>4</sup> For works

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<sup>2</sup> U.S. Copyright Office, <http://www.loc.gov/copyright/title17/>

<sup>3</sup> Copyright education web site, <http://copyright.lib.uci.edu/publicdomain.html#e>

<sup>4</sup> U.S. Copyright Office, <http://www.copyright.gov/circs/circ15.html>

registered or renewed since 1978, search the [U.S. Copyright Office online search site](#).<sup>5</sup> Alternatively, a researcher can arrange for the U.S. Copyright Office to conduct a search of the copyright records for \$75.00 per hour by submitting a [Search Request Form](#).<sup>6</sup> For more information about the U.S. Copyright Office search service, see [U.S. Copyright Office: Circular 22: How to Investigate the Copyright Status of a Work](#).<sup>7</sup> Additional options include writing a letter directly to the author or publisher verifying that there was no renewal, or purchasing search services from a commercial agency.

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<sup>5</sup> U.S. Copyright Office, <http://www.copyright.gov/records/> [Note, link on Web page is <http://www.loc.gov/copyright/rb.html/>, which is no longer accurate.]

<sup>6</sup> U.S. Copyright Office, <http://www.copyright.gov/circs/circ22-2.html>

<sup>7</sup> U.S. Copyright Office, <http://www.copyright.gov/circs/circ22.html>